

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

In the Matter Of:

MARIA MARGARITA RIVERA COSME  
SSN: xxx-xx-0522

Debtor

Case No. 10-02417 (BKT)

Chapter 13

MOTION TO DISMISS UNDER §1307(c)(6)

TO THE HONORABLE COURT:

COMES NOW, creditor POPULAR AUTO, INC., represented by the undersigned attorney and very respectfully states and prays as follows:

1. On March 29<sup>th</sup> 2010, debtor herein filed a bankruptcy petition under Chapter 13 of Title 11 of the United States Code.
2. Popular Auto is a secured creditor of the above named debtor pursuant to 11 U.S.C. §101(10) and therefore, a party in interest in the instant proceeding.
3. On April 14<sup>th</sup> 2006, debtor Maria M. Rivera Cosme subscribed with appearing creditor a Conditional Sales Contract, account no. xxx-xxx-xxxxxxx-0001, regarding a 2006 Hyundai Elantra. The contract was payable in one (1) initial monthly installment of \$404.94 and seventy-one (71) consecutive monthly installments of \$317.44 each and will expire by its own terms on April 14<sup>th</sup> 2012.
4. Popular Auto filed the corresponding claim for its secured debt on April 21<sup>st</sup> 2010, in the amount of \$8,710.42. See claim no. 2.

5. Debtor's proposed Chapter 13 Plan dated March 29<sup>th</sup> 2010 (docket no. 2), calls for sixty (60) payments of \$200.00 for a total base of \$12,000.00. The plan provides for the Trustee to pay attorney's fees in the amount of \$3,000.00; the value of the collateral to Popular Auto ("cramdown" provision); and pro-rata disbursements to all general unsecured creditors.
6. **Popular Auto submits that debtor has defaulted in the terms and conditions of her chapter 13 plan, having as of this date three (3) payments in arrears with the Chapter 13 Trustee, for a total amount of \$600.00 (\$200.00 x 3). See Exhibit no. 1, case Financial for case no. 10-02417.**
7. Upon information and belief, debtor has continued to operate and is at present operating the vehicle, causing depreciation in its value and therefore, jeopardizing Popular Auto's interest over such property.
8. Section 1307 (c)(6) of the Bankruptcy Code, 11 U.S.C. §1307 (c)(6), provides in pertinent part that:

“(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including- ... material default by the debtor with respect to a term of a confirmed plan.” (Emphasis added).

WHEREFORE, creditor POPULAR AUTO, Inc., respectfully requests from this Honorable Court that an order dismissing this case be entered for debtor's failure to comply with the requirements of §1307(c)(6) of the Bankruptcy Code, and grant any such other remedy it may deem just and proper.

NOTICE IS HEREBY GIVEN THAT WITHIN THIRTY (30) DAYS AFTER SERVICE AS EVIDENCED BY THE CERTIFICATION, AND AN ADDITIONAL THREE (3) DAYS PURSUANT TO FED. R. BANK. P. 9006(f) IF YOU WERE SERVED BY MAIL, ANY PARTY AGAINST WHOM THIS PAPER HAS BEEN SERVED, OR ANY OTHER PARTY TO THE ACTION WHO OBJECTS TO THE RELIEF SOUGHT HEREIN, SHALL SERVE AND FILE AN OBJECTION OR OTHER APPROPRIATE RESPONSE TO THIS PAPER WITH THE CLERK'S OFFICE OF THE U.S. BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO. IF NO OBJECTION OR OTHER RESPONSE IS FILED WITHIN THE TIME ALLOWED HEREIN, THE PAPER WILL BE DEEMED UNOPPOSED AND MAY BE GRANTED UNLESS: (i) THE REQUESTED RELIEF IS FORBIDDEN BY LAW; (ii) THE REQUESTED RELIEF ITS AGAINST PUBLIC POLICY; (iii) IN THE OPINION OF THE COURT, THE INTEREST OF JUSTICE REQUIRES OTHERWISE.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY: That on September 30<sup>th</sup> 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: **Mr. Juan O. Calderon Lithgow**, Esq., Attorney for debtor; **Mr. Alejandro Oliveras Rivera**, Esq., Chapter 13 Trustee; and I hereby certify that I have mailed by the United States Postal Service the document to the following non CM/ECF participants: **Ms. Maria M. Rivera Cosme**, Debtor, PO Box 1238, Morovis, P.R. 00687; and to all parties in interest as per attached master address list.

Respectfully submitted in San Juan, Puerto Rico, this 30<sup>th</sup> day of September, 2010.

**s/ EDGAR A. VEGA RIVERA**  
EDGAR A. VEGA RIVERA, ESQ.  
USDC- PR 212210  
Attorney for Popular Auto  
Consumer Bankruptcy Department  
PO Box 366818  
San Juan, Puerto Rico 00936-6818  
Tel. (787) 753-7849; Fax. (787) 751-7827  
Email: [edvega@bppr.com](mailto:edvega@bppr.com)

Print Page  Printer  
Friendly 

**FINANCIAL SUMMARY - CASE 10-02417**MARIA MARGARITA RIVERA COSME paying **\$200.00** MONTHLY[Receipts](#)[Rcpts/Deb  
Refunds](#)[Disbursements](#)[Adjustments](#)[Trustee Disb](#)[Trustee Adj](#)[Show All](#)Limits: [Select Start Date](#)  [Select Claim ID](#)  [Select Payee Name](#)  Check Status: [Cleared](#) [Stale Dated](#) [Stop Payment](#)

Date	Payee	Payee Name	Source / Check	Description	Receipts	Disbursements	Balance
7/8/2010			0500 00680 0090	LOCKBOX PAYMENT	\$200.00		
6/8/2010			0501 01480 0090	LOCKBOX PAYMENT	\$200.00		
5/6/2010			0654 00241 0090	LOCKBOX PAYMENT	\$200.00		
<b>Totals:</b>					<b>\$600.00</b>	<b>\$0.00</b>	

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

In the Matter Of:

**MARIA MARGARITA RIVERA COSME**  
**SSN: xxx-xx-0522**

**Debtor**

**CASE NO. 10-02417 (BKT)**

**Chapter 13**

**AFFIDAVIT FOR DEFAULT JUDGMENT PURSUANT TO SECTION 201(b)(4)**  
**OF THE SERVICE MEMBERS CIVIL RELIEF ACT OF 2003**

**I, Edgar A. Vega Rivera**, Attorney for the Consumer Bankruptcy Department of Banco Popular de Puerto Rico, declare under penalty of perjury the following:

That according to the enclosed certification, provided by the Department of Defense Manpower Data Center (DMDC), the Debtor is not in active duty or under call to active duty as a member of the Army, Navy or Air Force of the United States of America; the National Guard; the Public Health Service or the National Oceanic and Atmospheric Administration.

In San Juan, Puerto Rico, this 30<sup>th</sup> day of September, 2010.

s/ **EDGAR A. VEGA RIVERA**

Department of Defense Manpower Data Center

Sep-30-2010 12:37:03



Military Status Report  
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
RIVERA-COSME	MARIA MARGARITA	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

**More information on "Active Duty Status"**

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

**Coverage Under the SCRA is Broader in Some Cases**

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:P6DDPVGBR5

**10-02417-BKT13 MARIA MARGARITA RIVERA COSME**  
**Case type: bk Chapter: 13 Asset: Yes Vol: v Bankruptcy Judge: BRIAN K. TESTER**  
**Date filed: 03/29/2010 Date of last filing: 09/13/2010**

## Creditors

**BANCO SANTANDER** (2947745)  
PO BOX 362589 (cr)  
SAN JUAN, PR 00936

**CALVARY PORTFOLIO SERVICES** (2947746)  
Attention: BANKRUPTCY DEPARTMENT (cr)  
PO BOX 1017  
HAWTHORNE, NY 10532

**CENTENNIAL** (2947747)  
PO BOX 71514 (cr)  
SAN JUAN, PR 00936

**EASTERN AMERICA ISURANCE COMPANY** (3059291)  
PO BOX 9023862 (cr)  
SAN JUAN, PR 00902

**FIRST PREMIER BANK** (2947749)  
PO BOX 5524 (cr)  
SIOUX FALLS, SD 57117

**FIRST PREMIER BANK** (2947748)  
PO BOX 5524 (cr)  
SIOUX FALLS, SD 57117

**LIBERTY CABLE VISION** (2947750)  
ROAD 993 Km 0.2 (cr)  
LUQUILLO, PR 00773

**POPULAR AUTO** (2947751)  
PO BOX 15011 (cr)  
SAN JUAN, PR 00902-8511

**POPULAR AUTO** (2963092)  
BANKRUPTCY DEPARTMENT (cr)  
PO BOX 366818  
SAN JUAN PUERTO RICO 00936-6818

**Premier BankCard/Charter** (2987289)  
P.O. Box 2208 (cr)  
Vacaville, CA 95696

**RJM ACQ LLC** (2947752)  
575 UNDERHILL BLVD STE 2 (cr)



SYOSSET, NY 11791

**SALLIE MAE**  
11100 USA PARKWAY (2947753)  
FISHERS, IN 46037 (cr)

**Sallie Mae, Inc. on behalf of USA Funds**  
Attn: Bankruptcy Litigation Unit E3149 (2966404)  
PO Box 9430 (cr)  
Wilkes-Barre, PA 18773-9430

**U S Department of Education**  
P O Box 65128 (3057467)  
St. Paul, MN 55165 (cr)

**US DEPT OF EDUCATION**  
Attn: BORROWERS SERVICE DEPT (2947754)  
PO BOX 5609 (cr)  
GREENVILLE, TX 75403

**USA FUNDS/SALLIE MAE SERVICING**  
Attn: BANKRUPTCY (2947755)  
11100 USA PARKWAY (cr)  
FISHERS, IN 46037

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
09/30/2010 14:44:27			
<b>PACER Login:</b>	bp0057	<b>Client Code:</b>	
<b>Description:</b>	Creditor List	<b>Search Criteria:</b>	10-02417-BKT13 Creditor Type: All
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08